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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,383	10/20/2003	Charbonneau Joan	64837/007	4159

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HUSCH & EPPENBERGER, LLC  
190 CARONDELET PLAZA  
SUITE 600  
ST. LOUIS, MO 63105-3441

EXAMINER
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FOSTER, JIMMY G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/689,383

**Applicant(s)**

JOAN, CHARBONNEAU

**Examiner**

Jimmy G. Foster

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 2 is/are allowed.
- 6) ☒ Claim(s) 3-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1) Claims 1 and 2 are allowable.

2) The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3) Claims 3-5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over North et al (6,386,358) in view of Zanegood (2,940,447). Applicant's attention is directed to the embodiment of Figures 4-8 and particularly to Figure 8. The reference of North et al includes a drinking vessel, including a bottle 12 and cap 32. The cap 32 includes a vented pocket which is defined by the inner wall of the cap shown in Figure 8 and by the grill member 30. The pocket is vented by the holes shown in the grill (see Figs. 7 and 8). The cap additionally includes an outer wall attached by screw threads to the mouth/neck of the bottle as indicated at Figures 4-6.

The cap 32 is considered to be telescopically attached to the mouth of the bottle since rotating the cap 32 with respect to the bottle 12 will increase the overall length of the combination, as indicated in Figure 8, wherein the top extremity of the cap does not rest on the top of the mouth of the bottle, which is in contrast to Figures 4-7 which show the top extremity of the cap 32 as resting on the top of the mouth of the bottle.

The bottle includes a base, as shown in Figures 4-7.

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The screw threads of the bottle are frictionally intermeshed with threads of the bottle (see Figs. 4-7). The examiner asserts that this intermesh fit of the cap and bottle is inherently liquid-tight. This is inherency based upon the construction of the intermesh which shows no gap between the threads. This inherency is also based upon the conventional liquid-tight nature of caps for bottles. This is also based upon the showing of Figure 7, which shows that dispensing of liquid through the top of the cap is not accompanied by any liquid being expelled between the threaded engagement of the cap with the bottle. Moreover, even if there is no express disclosure of a liquid tight nature between the cap and bottle, the threads and what is shown in Figure 7 would have made it obvious to one of ordinary skill in the art to have provided the screw intermesh in a liquid-tight fashion.

Inasmuch as the cap outer wall, which has the cap threads, and the bottle outer surface, which has the bottle threads, are cylindrical (as seen in all Figures 4-8), and inasmuch as the cap and bottle threads do not show gaps between them, it is asserted that the liquid-tight nature of the cap 32 on the bottle will exist even when the cap is extended some from the top of the bottle in the manner as shown in Figure 8, or such a liquid-tight nature would have been sufficiently suggested by the disclosure as a whole as to have further been obvious to one of ordinary skill in the art, based upon the cylindrical shapes and the lack of gaps in the intermesh of the screw threads.

The package (Figs. 4-8) of North et al further includes a lid at seal 34. Inasmuch as the lid 34 is located above the mouth of the bottle, and includes a circumference that is greater than the circumference of the mouth

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of the bottle, the lid 34 may be reasonably said to be disposed over the circumference of the bottle.

Accordingly, the length of the bottle 12 of North et al defines a first telescoping section/component which is joined to a base (i.e. the bottle base), while the exterior wall of the cap 32 defines a second telescoping component/section, which has a vented pocket attached thereto. The first telescoping component/section (the walls of the bottle 12) of North et al is located between the base (of the bottle) and the second telescoping component/section (the exterior of cap 32). The first and second telescoping components/sections are adapted to provide a friction-fitting, liquid-tight fit between them, even when the second telescoping section is extended somewhat with respect to the first telescoping component section (as in Fig 8). Accordingly, the entire combination of North et al constitutes a container 32,12 that may be collapsed from the position shown in the Figure 8 to a position shown in any of Figures 4-7. The reference, in addition to providing this structure, provides the step of disposing a pill in the pocket (see Fig 8 for example) and the step of disposing a lid (34) of the circumference of the collapsible container.

Accordingly Applicant's claims 3-5 distinguish from the reference of North et al only by the fact that vessel 12 of North et al constitutes a bottle and might not be considered to constitute a cup.

The bottle 12 constitutes a drinking bottle (see col. 2, lines 28-31). It has been held that the omission of an element and its function is an obvious expedient if the remaining elements perform their same function as before. In re Karlson, 136 USPQ 184. The function of the neck on the drinking bottle 12, as with most drinking bottles, is to focus the flow of liquid from the bottle. In the case of North et al it is to focus the

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dispensing of the liquid during drinking. However, it is known in the art of containers for drinking liquid while swallowing pills, to make a drinking container without a neck, such as with a glass or cup, as suggested by Zanegood. The function of focusing the dispensing of the liquid into ones mouth is omitted along with the necking of the container, and the container becomes a glass/cup. It would have been obvious in view of In re Karlson and Zanegood to have made the container 12 of North et al without a neck if one does not desire the liquid focused during drinking.

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claim 4 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 of U.S. Patent No. 6,666,329 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent claim includes all of the subject matter that is set forth in the present claim. The structure claimed in the patent claim includes a base, plural telescoping sections, and a vented pocket.

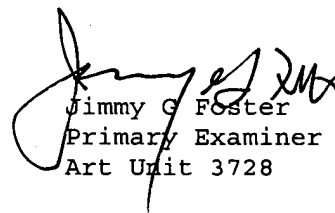
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4) Applicant's arguments with respect to claims 3-5 have been considered but are deemed to be moot in view of the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G. Foster whose telephone number is (571) 272-4554. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jimmy G. Foster  
Primary Examiner  
Art Unit 3728

JGF  
21 June 2005